

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

KENNETH PRICE, #150784,)	
a.k.a., KENNY PRICE,)	
)	
Petitioner,)	
)	
v.)	CIVIL ACTION NO. 2:06-CV-236-WKW
)	
J. C. GILES, et al.,)	
)	
Respondents.)	

ORDER

In their answer filed with this court on May 3, 2006, the respondents assert that the petitioner has failed to exhaust state remedies with respect to the claims now pending before this court. Specifically, the respondents maintain that the petitioner may present his void indictment and unlawful sentence claims to the state courts in a petition filed pursuant to Rule 32 of the Alabama Rules of Criminal Procedure. *Respondents' Answer* at 33-34.

The law directs that a petition for writ of habeas corpus filed by “a person in custody pursuant to the judgment of a State court shall not be granted unless it appears that the applicant has exhausted the remedies available in the courts of the [convicting] State ...” 28 U.S.C. § 2254(1)(b)(1)(A). Upon review of the pleadings filed in this case, it is clear that the petitioner has not yet exhausted his available state court remedies with respect to each of the claims presented in his petition for habeas corpus relief. This court does not deem it appropriate to rule on the merits of the petitioner's claims without first requiring that the petitioner exhaust state remedies. *See* 28 U.S.C. § 2254(1)(b)(2). Moreover, it

does not appear that a stay of this case is warranted pending the outcome of any state court collateral proceeding Price may file as there is nothing before this court which indicates “good cause for the petitioner’s failure to exhaust his claims first in state court.” *Rhines v. Weber*, 544 U.S. 269, 125 S.Ct. 1528, 1535 (2005). Accordingly, it is

ORDERED that on or before May 25, 2006 the petitioner shall show cause why his petition should not be dismissed for failure to exhaust state remedies.

DONE, this 4th day of May, 2006.

/s/ Susan Russ Walker
SUSAN RUSS WALKER
UNITED STATES MAGISTRATE JUDGE